IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10826 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHARTIBEN W/O. MANILAL SUKHABHAI DHODIYA PATEL

Versus

THE STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10826 of 2004

MS SUBHADRA G PATEL for Petitioner No. 1

MRS HB PUNANI, AGP for Respondent No.3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 24/01/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226 of the Constitution of India has been filed by the petitioner challenging her detention in pursuance of the order passed by the Police Commissioner, Surat City on 23rd July, 2004 in exercise of powers conferred upon him

under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 ["PASA Act" for short]. The petitioner is under detention as bootlegger from 23rd July, 2004 in pursuance of the abovesaid order.

2. The grounds of detention as placed on record disclose that three crimes came to be registered against the petitioner at Western Zone Prohibition Police Station, Surat on 9th November, 2003, 30th May, 2004 and 23rd June, 2004 under the Bombay Prohibition Act, whereby it was alleged that the petitioner was found in possession of prohibited foreign liquor. After going through the investigation papers in all the above three crimes exhaustively and thoroughly, the detaining authority came to the conclusion that the petitioner was dealing in storing, selling and transporting foreign liquor and, therefore, she was bootlegger within the meaning of PASA Act. The detaining authority also came to the conclusion from the above materials that the activities of the petitioner was prejudicial to the maintenance of the public order and adversely affecting the public health. After considering the remedies available in general law, the detaining authority come to the conclusion that to prevent the illegal activities of the petitioner forthwith, there was no other alternative, except to pass an order of detention of the petitioner. The detaining authority, therefore, passed the said detention order, which is under challenge in this petition.

3. Learned advocate Ms.S.G.Patel, for the petitioner and learned AGP Mrs.H.B.Punani, for the respondent No.3 were heard at length. The affidavit-in-reply filed by the detaining authority and as placed on record by the learned AGP is also taken into consideration.

4. Out of various grounds urged on behalf of the petitioner and opposed and controverted by the learned AGP, it appears that this petition can be examined and disposed of on the sole issue that whether there was sufficient material placed before the detaining authority to come to the conclusion that by the activities of the petitioner, the public order was disturbed and public health was adversely affected.

5. To reach to a subjective satisfaction that bootlegging activities of the petitioner were prejudicial to the maintenance of public order and public health, the detaining authority must rely upon cogent material against the detenu indicating that the activities of the detenu directly or indirectly were causing or were likely

to cause any harm, danger or alarm or feeling of insecurity among the general public or any section thereof or a grave or wide spread danger to life, property or the public health. While going through this exercise, the detaining authority must draw a clear line between "breach of law and order" and "breach of public order". In the present case, the detaining authority relied upon the investigating papers of three crimes registered against the petitioner. On going through the investigating papers, as placed on record, it clearly appears that fall out, reach and impact of the activities of the petitioner alleged in the investigating papers were not capable of affecting maintenance of public order or adversely affecting the public health. As at the most three cases registered under the Bombay Prohibition Act against the detenu can be said to be a breach of law and order. For this breach, the petitioner is going to be tried and may be punished, if she is found guilty, but surely the act constituting the offence alleged cannot be said to have affected the even tempo of the life of the community. Therefore, the cases registered against the detenu on the ground that she was dealing in liquor have no bearing on the question of maintenance of public order. Except this, no other material placed before the detaining authority. In this view of the matter, the subjective satisfaction arrived at by the detaining authority in respect of disturbance of the public order and public health by the alleged activities of the petitioner cannot be said to be legal, valid and in accordance with law. The order under challenge, therefore, is required to be quashed and set aside on this ground alone.

6. In the result, in view of this discussion, this petition is allowed. The order passed by the Police Commissioner, Surat City on 23rd July, 2004 against the detenu in exercise of powers under Section 3(2) of the PASA Act is hereby quashed and set aside. The detenu BHARTIBEN W/O. MANILAL SUKHABHAI DHODIYA PATEL is ordered to be detained in Jail for any other purpose. Rule is made absolute. Direct service is permitted.

[J. R. VORA,J.]

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